Convention on the Rights of the Child

Distr.: General
11 July 2017

Original: English

Committee on the Rights of the Child

Concluding observations on the combined third and fourth reports submitted by the United States of America under article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*

I. Introduction

1. The Committee considered the combined third and fourth periodic reports of the United States of America (CRC/C/OPAC/USA/3-4) at its 2196th meeting (see CRC/C/SR.2196), held on 16 May 2017, and adopted the present concluding observations at its 2221st meeting, held on 2 June 2017.

2. The Committee welcomes the submission of the report of the State party and the written replies to the list of issues (CRC/C/OPAC/USA/Q/3-4/Add.1). The Committee expresses appreciation for the constructive dialogue held with the multisectoral delegation of the State party.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with the concluding observations on the combined third and fourth periodic reports of the State party submitted under the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (CRC/C/OPSC/USA/CO/3-4), adopted on 2 June 2017.

II. General observations

4. The Committee is concerned that the State party, despite multiple recommendations made in previous concluding observations to accelerate its ratification process of the Convention on the Rights of the Child, has not made progress in that regard. The Committee notes that, all the same, the State party underscored once again during the constructive dialogue that it agreed with the Convention's "underlying goal of protecting some of humanity's most vulnerable persons": children. In that regard, the Committee reiterates once again its previous recommendations (see CRC/C/OPAC/USA/CO/2, para. 4 and CRC/C/OPAC/USA/CO/1, para. 34) and urges the State party to accelerate the ratification process of the Convention.

Positive aspects

5. The Committee welcomes the various positive measures taken in areas relevant to the implementation of the Optional Protocol, in particular the State party's efforts to ensure

* Adopted by the Committee at its seventy-fifth session (15 May-2 June 2017).

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that all feasible measures, including by military departments, to put in place checks in their personnel systems are taken in order to comply with the Optional Protocol. It also welcomes the State party's support to foreign Governments and international organizations to monitor, report and prevent the unlawful recruitment and use of child soldiers and to protect, assist and rehabilitate children associated with fighting forces through disarmament, demobilization, rehabilitation and reintegration programmes, as mentioned in paragraph 4 of the State party's report.

III. General measures of implementation

Legislation

6. The Committee regrets that the State party has taken limited actions towards reviewing and amending its legislation, in particular with regard to the prohibition of recruitment of children between the ages of 15 to 18 years, and towards withdrawing the possibility of presidential waivers to countries involved in recruitment and use of children in armed conflict and/or hostilities, as mentioned in the 2008 Child Soldiers Prevention Act, despite the Committee's recommendations in the previous concluding observations (see CRC/C/OPAC/USA/CO/2, paras. 10 and 41).

7. **The Committee urges the State party to review and amend the existing legislation, in particular the 2008 Child Soldiers Accountability Act and the 2008 Child Soldiers Prevention Act, in order to comply with the object and purpose of the Optional Protocol and the interpretation provided by the Committee.**

Reservations

8. The Committee regrets that the State party maintains its restrictive interpretation of the provisions of the Optional Protocol lodged as "understandings", in particular in relation to the definition of "direct part in hostilities" and "minimum age for voluntary recruitment". However, the Committee reminds the State party that the text of the Optional Protocol should be interpreted in line with the context, object and purpose of the Optional Protocol to protect all children under the age of 18 years from involvement in armed conflict.

9. **The Committee recommends that the State party review its restrictive understanding of the Optional Protocol, in particular, the concept of "direct part in hostilities" and "minimum age of voluntary recruitment" in order to ensure that no child under the age of 18 years is exposed to a situation of armed conflict or any other activities in the context of armed conflict.**

Independent monitoring

10. The Committee welcomes the significant increase in the number of child advocate offices, but remains concerned that no progress has been made to establish an independent national human rights institution in line with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) to regularly monitor progress in the fulfilment of children's rights under the Optional Protocol and to receive and address complaints from children.

11. **The Committee reiterates its previous recommendation (see CRC/C/OPAC/USA/CO/2, para. 14) that the State party establish a national independent mechanism in line with the Paris Principles and encourage those states that have not yet done so to set up an office of the Child Advocate or Ombudsman similarly charged to monitor the fulfilment of rights under the Optional Protocol and deal with children's complaints of violations of their rights in a child-friendly and expeditious manner.**

Dissemination and awareness-raising

12. The Committee notes the State party's information that the Optional Protocol and related material are disseminated widely and included in an annual report on trafficking in persons. However, the Committee regrets that the Optional Protocol is neither a mandatory

part of the school curriculum, including of military schools, nor included in the recruitment package. Furthermore, it is not clear to what extent human rights and peace education covers the provisions of the Optional Protocol.

13. **The Committee reiterates its previous recommendation that the State party ensure that the principles and provisions of the Optional Protocol are disseminated widely among the general public, children and their families (see CRC/C/OPAC/USA/CO/2, para. 15). It also recommends that the State party include the provisions of the Optional Protocol in the school curriculum at the relevant levels and make the Optional Protocol an integral part of the package received by recruits.**

Data

14. The Committee welcomes the data provided by the State party on voluntary recruits under the age of 18 years and asylum-seeking and refugee children, including from conflict-affected areas. However, it remains concerned about the absence of a central data-collection system to identify and register all children entering the State party or already within its jurisdiction and who may have been recruited or used in hostilities abroad.

15. **The Committee recommends that the State party establish a mechanism for the comprehensive collection of data, disaggregated by sex, age, nationality and ethnic origin, on asylum-seeking, refugee, migrant and unaccompanied children entering the State party or who are already within its jurisdiction and who may have been recruited or used in hostilities abroad.**

Right to life, survival and development

16. While noting the State party's position that civilian casualties, including the deaths of children, in the context of armed conflict falls outside the scope of its obligations under the Optional Protocol, the Committee reminds the State party of its obligations under international humanitarian law not to attack civilian individuals and objects, such as schools and hospitals. In that regard, the Committee remains seriously concerned about the deaths of children killed as a result of airstrikes by the United States military forces or foreign forces backed by the United States in countries like the Syrian Arab Republic and Yemen, and Afghanistan, where the number of child casualties has increased significantly in the past two years. It is particularly concerned about the airstrikes on a hospital run by the non-governmental organization Medicins sans Frontieres in Kunduz, Afghanistan, on 3 October 2015 and military raids in the Al-Bayḍa governorate of Yemen in January 2017, which resulted in the deaths of children. The Committee takes note of the clarification provided by the State party in its replies to the list of issues with regard to the airstrike in Kunduz, but is concerned about the insufficient accountability and disproportionately light sanctions imposed on persons responsible for the incident.

17. **The Committee reiterates its previous recommendation (see CRC/C/OPAC/USA/CO/2, para. 8) and reminds the State party that it is responsible for the protection of civilians, particularly children, whose safety should be prioritized in all military operations, and that it should prevent civilian casualties in accordance with the principles of distinction, proportionality, necessity and precaution. The Committee urges the State party to:**

(a) **Take concrete and firm precautionary measures and prevent the indiscriminate use of force to ensure that civilians, in particular children, are no longer killed or maimed;**

(b) **Ensure that all allegations of violations against children perpetrated by United States military forces are investigated in a transparent, timely and independent manner, and ensure that perpetrators of those violations are brought to justice, prosecuted and receive commensurate sanctions if found guilty;**

(c) **Ensure that children and families victims of attacks, raids and air strikes always receive redress and compensation.**

IV. Prevention

Voluntary recruitment

18. While noting the State party's explanations for maintaining the age of 17 years for the voluntary recruitment to the armed forces, the Committee remains concerned that the State party:

(a) Maintains the quota system for military recruiters, which may cast doubt on the voluntary nature of the recruitment of children under the age of 18 years;

(b) Continues to provide military recruiters with access to high school students' names, addresses and telephone listings, and that parents are not always informed of their rights to opt out or to request not to release such information.

19. **The Committee recommends that the State party:**

(a) **Reconsider its recruitment policies and practices by, inter alia, amending the No Child Left Behind Act and ensuring that such practices do not actively target persons under the age of 18 years, abolishing the recruiter quota system and ensuring that military recruiters' access to school grounds be limited;**

(b) **Prohibit the disclosure of information on students without prior expressed parental consent and ensure that recruitment policies and practices are brought into line with the respect for privacy of children;**

(c) **Continue and strengthen monitoring and oversight of recruiters' irregularities and misconduct by effective investigation, imposition of sanctions and, when necessary, prosecution of recruiter misconduct.**

20. The Committee takes note of the information provided by the State party in paragraph 19 of its report that no service members under the age of 18 years have been deployed to areas where hazardous pay and/or imminent danger pay were authorized in the previous three years. Nevertheless, the Committee remains seriously concerned that the current policies and regulations, despite certain safeguards, do allow for the deployment of 17-year-old service members to such areas where they can be requested to perform inherently dangerous duties and may be at risk of direct participation in hostilities.

21. **The Committee recommends that the State party take measures to review its policies and regulations in order to ensure that under no circumstances children under the age of 18 years could be deployed to areas where hazardous pay and/or imminent danger pay were authorized.**

Military courses

22. The Committee takes note of the information provided by the State party (see CRC/C/OPAC/USA/3-4, para. 20) that the Junior Reserve Officer Training Corps is a voluntary "elective" course from which students may withdraw at any time. Nevertheless, the Committee remains concerned that:

(a) Despite the State party's assurances, children are reportedly not always properly informed that enrolment into the Corps programme is of a voluntary nature;

(b) The programme continues to be used as a substitute for students enrolled in oversubscribed classes from which children cannot withdraw without losing their course credit (see CRC/C/OPAC/USA/CO/2, para. 24);

(c) Children enrolled in the Corps may be trained to use weapons as admitted by the State party (see CRC/C/OPAC/USA/3-4, para. 20).

23. **The Committee therefore reiterates its previous recommendation (see CRC/C/OPAC/USA/CO/2, para. 25) that the State party:**

(a) **Ensure that families and children are properly informed of the voluntary nature of the Junior Reserve Officer Training Corps programme;**

(b) **Ensure that the Corps is not used as a substitute for oversubscribed regular school courses;**

(c) **Ban training on the use of firearms for children and ensure that any military training for children takes into account human rights principles and that the educational content is periodically monitored by the Federal Department of Education.**

24. The Committee is also concerned that the State party does not seem to monitor the Army Cadet Corps and lacks information on the number of children enrolled and activities undertaken in the Corps, where children as young as 11 years can be enrolled.

25. **The Committee recommends that the State party establish mechanisms to monitor the Army Cadet Corps and provide in its next periodic report data disaggregated by sex, age, ethnic and national origin and socioeconomic background on children enrolled in the Corps and on the type of activities they undertake.**

V. Prohibition and related matters

Criminal legislation and regulations in force

26. The Committee reiterates its concern that the State party's legislation, in particular the 2008 Child Soldiers Accountability Act, criminalizes only the recruitment of children under the age of 15 years, which is not in line with the object and purpose of the Optional Protocol to protect all children under the age of 18 years from involvement in armed conflict. The Committee notes the State party's information that private security personnel do not take part directly in hostilities and that the requirements and conditions for employment of such personnel do not allow for the recruitment of anyone under the age of 18 years. Nevertheless, in the light of the restrictive interpretation of the notion of "direct participation in hostilities", the Committee regrets that the State party has failed to criminalize and prohibit explicitly the recruitment and use of children by private military and security companies.

27. **The Committee recommends that the State party:**

(a) **Prohibit explicitly and criminalize the use of children under 18 years of age in hostilities by armed forces or by private military and security companies;**

(b) **Review and harmonize its policies and regulations concerning the activities of private military and security companies with the principles and provisions of the Optional Protocol.**

28. **The Committee reiterates its recommendations (see CRC/C/OPAC/USA/CO/2, para. 30 and CRC/C/OPAC/USA/CO/1, paras. 24-25) that the State party consider ratifying the following international instruments:**

(a) **The Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), of 8 June 1977;**

(b) **The Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), of 8 June 1977;**

(c) **The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, of 18 September 1997;**

(d) **The Rome Statute of the International Criminal Court.**

29. The Committee is concerned that the State party does not criminalize the recruitment and use of children under the age of 18 years by non-State armed groups, as required by article 4 of the Optional Protocol.

30. **The Committee recommends that the State party review its legislation with a view to prohibiting the recruitment and use of children under the age of 18 years by non-State armed groups, in compliance with article 4 of the Optional Protocol.**

Impunity

31. The Committee is deeply concerned about the reports of grave violations of human rights, including children's rights, committed by private military and security companies in Afghanistan and Iraq, notably the killing and maiming, detention, torture and recruitment of children and the full impunity enjoyed by perpetrators of such crimes.

32. **The Committee urges the State party to initiate prompt and effective investigation into the reports of violations of children's rights by private military and security companies abroad, in particular in Afghanistan and Iraq, to bring those responsible to justice and provide child victims and families of child victims with adequate compensation.**

VI. Protection, recovery and reintegration

Measures adopted to protect the rights of child victims

33. The Committee regrets that the State party has not taken sufficient measures to revise its legislation since the previous examination, in particular the Immigration and Nationality Act, which denies children deemed to be associated with "armed resistance" access to refugee admission programmes. It remains concerned that the State party continues to deny discretionary exemptions to former child soldiers, even when the children acted under duress. The Committee also remains concerned that the best interests of the child do not play a direct role in determining substantive eligibility under the State party's refugee definition as admitted by the State party (see CRC/C/OPAC/USA/3-4, para. 29).

34. **The Committee reiterates its previous recommendation (see CRC/C/OPAC/USA/CO/2, para. 36) that the State party take all appropriate measures to ensure rehabilitation and social reintegration of child victims of acts contrary to the Optional Protocol. In that regard, it urges the State party to institute a discretionary exemption from the "armed resistance" bar to allow a favourable consideration on a case-by-case basis of applications for asylum, refugee protection or other lasting status for former child soldiers who are otherwise eligible for the protection or benefit they seek. The Committee also recommends that the State party fully take into account the right of the child to have her or his best interests taken into consideration when making substantive eligibility determinations under the United States refugee determination.**

Treatment of children associated with armed groups

35. The Committee notes the information provided by the State party that it no longer operates detention facilities in Afghanistan since 1 January 2015, but provides support to the Government of Afghanistan in building its capacity on the treatment and handling of detainees. However, the Committee is concerned that the State party failed to provide information on investigations into allegations of torture and ill-treatment of children detained by international military forces as documented by the 2015 report of the United Nations Assistance Mission in Afghanistan entitled "Update on the Treatment of Conflict-related Detainees in Afghan Custody".[1]

36. **The Committee urges the State party to:**

(a) **Use its advisory role to the Afghan military, security and law-enforcement personnel to prevent torture and ill-treatment of children in detention and protect children who have fallen victims of such ill-treatment;**

[1] Available from https://unama.unmissions.org/treatment-conflict-related-detainees-afghan-custody.

(b) **Provide information on the investigation carried out on torture and ill-treatment of children by international military forces as documented in the 2015 report of the United Nations Assistance Mission in Afghanistan and its outcomes.**

VII. International assistance and cooperation

Arms export and military assistance

37. The Committee notes the State party's position conveyed during the constructive dialogue, and in paragraph 31 of its report, and paragraphs 33 to 36 of its replies to the list of issues, that waivers under the Child Soldiers Prevention Act of 2008 are aimed at reforming the affected countries' armed forces and professionalizing them to better respect human rights. However, it is concerned that partial and/or full waivers have been granted to some countries with records of violations of children's rights under the Optional Protocol, including the recruitment and use of child soldiers, and that such waivers focus, for the most part, on provision of arms, military equipment and financing for military purchases, while international military education and training aimed at the professionalization of foreign armed forces comprise part of only a few military assistance programmes.

38. **The Committee urges the State party to review its legislation with a view to withdrawing the possibilities of presidential waivers and prohibit arms export and military assistance to all countries where children are known to be, or may potentially be, recruited or used in armed conflict and/or hostilities.**

VIII. Ratification of the Optional Protocol on a communications procedure

39. **The Committee recommends that the State party ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, in order to further strengthen the fulfilment of children's rights.**

IX. Implementation and reporting

A. Follow-up and dissemination

40. **The Committee recommends that the State party take all appropriate measures to ensure that the recommendations contained in the present concluding observations are fully implemented, including by transmitting them to the President, Congress, members of the Cabinet, Executive Departments, Agencies and the Judiciary for appropriate consideration and further action.**

41. **The Committee recommends that the report and the written replies to the list of issues submitted by the State party and the present concluding observations be made widely available, including through the Internet, to the public at large, civil society organizations, youth groups, professional groups and children, in order to generate debate on and awareness of the Optional Protocol and its implementation and monitoring.**

B. Next periodic report

42. **In accordance with article 12 (2) of the Optional Protocol, the Committee requests the State party to include further information on the implementation of the Optional Protocol and the present concluding observations in its fifth periodic report, due on 23 January 2022.**